IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 19604 of 2004

Between:

1 The State of Andhra Pradesh, represented by its Secretary, Transport, Roads & Buildings Department, Secretariat, Hyderabad.
2 The Engineer-in-Chief (R&B) Admn., A.P.,Hyderabad.

..... PETITIONERS

AND

Sri B.Satyanarayana Raju, Draughtsman Grade-I (Retired),
r/o D.No.26/12/IA, Balusumuli, Koppulavari Thota,
Bhimavaram, West Godavari District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, particularly one in the nature of certiorari by calling for the records relating to the order passed in O.A.No.1637 of 2000 dated 23-10-2003 and quash the same as illegal and arbitrary.

Counsel for the Petitioners: GP FOR SERVICES II

Counsel for the Respondent: MR.T.V.V.KOTESWARA RAO

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed by the State assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.1637 of 2000, dated 23.10.2003.

2. The respondent was working as Draftsman Grade-I. He retired from service on 30.6.1996. While so, when he was in service, a charge memo dated 26.12.1995 was issued to him alleging certain irregularities viz., he colluded with the contractor B.Narayana Rao and inserted a fresh page in place of original page in the tender submitted by him with regard to the rates. After the retirement, an enquiry was conducted and the Enquiry Officer submitted his report on 22.10.1997 holding that the charge was not proved against the respondent. However, the Government issued a show cause notice dated 15.6.1999 differing with the findings of the Enquiry Officer and proposed the punishment of cut of 10% pension. To the said show cause notice the respondent submitted an explanation. Thereafter the Government passed the impugned order in GO.Rt.No.935, TR&B, dated 11.10.1999 confirming the proposed punishment. Against the said order, the respondent filed the above OA before the Tribunal. The learned Tribunal, after considering the matter elaborately, held that the action of the Government in imposing the punishment of 10% cut in pension is wholly unwarranted and accordingly set aside the said G.O. Against the said order, the present Writ Petition has been filed by the State.

3. The learned Government Pleader for Services-II submits that the Tribunal has conducted an exercise as if it is an appellate authority and has re-appreciated the matter and came to a different conclusion which is not permissible under the provisions of Administrative Tribunals Act. He further submits that the Tribunal has to see only whether the process adopted by the Government is fair and proper. He also submits that as far as the punishment aspect is concerned, it cannot be gone into by the Tribunal, but in the instant case it has usurped the jurisdiction of the

original authority and held that the findings recorded by the Government are wholly unsustainable and set aside the same, and therefore the order of the Tribunal is liable to be set aside.

4. On the other hand the learned counsel for the respondent submits that the order of the Tribunal cannot suffer from any infirmity as it has only made an exercise to see as to whether the action of the Government is perverse and whether there was any material on record to impose the punishment.

5. The issue that arises for consideration is whether the Tribunal can interfere with the order of punishment passed by the Government.

6. For this purpose, we need not elaborate the issue as it has held in catena of decisions that the Tribunal is only required to see whether the process adopted by the Government is fair and proper and passed the order keeping in view the principles of natural justice. Admittedly in the instant case, the Enquiry Officer held that the charges were not proved against the respondent, whereas the Government disagreeing with the findings of the Enquiry Officer, taken a decision for imposing the punishment. When the Government has disagreed with the findings of the Enquiry Officer, it is incumbent on its part to issue notice to the respondent as to why the Government should not differ with the findings of the Enquiry Officer, and in the instant case no such opportunity was given to the respondent. Moreover, in the show cause notice itself it had indicated the proposed punishment which is wholly unwarranted and contrary to the legal proposition. Be that as it may, even after the submission of the explanation by the respondent, the Government did not consider the same and stuck to its original form of imposing punishment of 10% cut in his pension. The Tribunal had discussed this aspect in its order in paras 10 and 11, which reads thus—

> "After hearing both the counsel, I have carefully gone through the papers. It is seen from the report furnished by the District Vigilance and Enforcement Officer that he held only 3 officials as responsible for the allegation made with regard to tampering the page 37 of tender document of Sri B.Narayana Rao, Contractor. For this, he had arraigned only Draftsman Grade-II, the Deputy Superintending Engineer and the Superintending Engineer. The name of the applicant does not figure at all as one of those responsible for the said tampering. This report was issued on 22.1.1994 addressed to the Director General of Vigilance and Enforcement. It is also to be seen that the Enquiry Officer who is the Chief Engineer, after detailed

enquiry, held that the charge of tampering with the record at page 37 or causing loss to the Government is not at all proved against the applicant.

However, having received the report, the Government have issued a show cause notice enclosing a copy of the enquiry report to the applicant as stipulated in the CCA Rules. This show cause notice was issued by the Government in Memo No.471/S.I-2/94-24, dated 15.6.1999. What was observed by the Government in the show cause notice is that they found that the records have been tampered and different inks were used for making serial number of pages. The entries at page 37 of the tender filed by B.Narayana Rao was originally written with pencil and subsequently inked with a different pen and the correctness of the figures could not be verified as records were found to have been already tampered by the time the Vigilance and Enforcement officials seized. They had also stated that tampering was resorted to, to help the contractor fraudulently by raising the tender premium which would have caused loss of nearly Rs.70,000/- to the State exchequer. Thus, it could be seen that the Government held that different ink pens were used for making the serial number of pages. The enquiry officer himself confirmed what was stated by the applicant that the numbers were written by Draftsman Grade-II who prepared the comparative statement and it is the applicant who had inked the writing of the Draftsman Grade-II with regard to the rates and amounts. Thus, it is nothing but natural that different ink colours would be found as the page numbering was done by the Draftsman Grade-II and the rates and amounts were inked by the applicant which is what was confirmed by the Chief Engineer also in his enquiry report. Thus, the observations of the Government in this regard cannot form a basis to indict the applicant".

In view of the above, it cannot be said that the Tribunal has re-appreciated the entire matter, but it had only perused the material so as to come to the conclusion whether the findings are fair and proper or they are vitiated by perverse. Thus, we find the order of the Tribunal cannot be said to suffer from any illegality or irregularity. We do not find any merit in the Writ Petition.

7. In the result, the Writ Petition is dismissed. No costs.

(G.BIKSHAPATHY, J.)

22nd March, 2005.

SSR (P.S.NARAYANA,J.)

..... REGISTRAR

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SECTION OFFICER

To

1 The Secretary, Transport, Roads & Buildings Department, State of Andhra Pradesh, Secretariat, Hyderabad.
2 The Engineer-in-Chief (R&B) Admn., A.P.,Hyderabad.

3 The Registrar, A.P. Administrative Tribunal, Hyderabad.

4 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad. (OUT)

5 2 CD copies

6 1 CC to MR.KOTESWARA RAO

*Form-NIC-OGS/WP{**RS**}*